



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MOP - 203561

PRELIMINARY RECITALS

Pursuant to a petition filed on October 28, 2021, under Wis. Stat. § 49.45(5), and Wis. Admin. Code §HA 3.03(1), to review a decision by the Racine County Department of Human Services regarding Medical Assistance (MA), a hearing was held on December 21, 2021, by telephone.

The issue for determination is whether the agency has established an MA overpayment against the petitioner.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED], Fraud Investigator
Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. On December 27, 2013 petitioner applied for MA.

3. On August 19, 2014 petitioner completed a renewal for MA.
4. On August 20, 2014 a notice was mailed to the petitioner advising him that his he was enrolled in MA, and that he needed to report if his gross monthly income went over \$972.50.
5. On September 15, 2015 petitioner completed a renewal for MA.
6. On September 16, 2015 the agency mailed an Enrollment and Benefits booklet to the petitioner. It contained information about reporting requirements for income and monthly income limits.
7. On September 9, 2016 petitioner completed a renewal for MA and reported new employment. The agency thereafter received verification of petitioner's wages from his employer. The agency determined his income was over the income limit and his MA ended October 1, 2016.
8. The agency found that petitioner's wages went over his reporting requirement in May 2016 and remained over the limit through September 2016.
9. On September 14, 2021 the agency issued a notice of MA overpayment to the petitioner advising him that he was overpaid MA from July 1, 2016-September 30, 2016 in the amount of \$551.79.

DISCUSSION

MA overpayment recovery is authorized by Wis. Stat., §49.497(1):

(a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665.
2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

The income limit for BadgerCare Plus (BC+) is 100% of the Federal Poverty Level (FPL), which, for a 1-person household was \$972.50 in 2014, \$980.83 in 2015, and \$990 in 2016. See Wis. Stat., §49.471(4)(a)4.b for the law, and the BC+ Handbook, §50.1 (Release 14-01, 15-01, 16-01) for the limit at the time of petitioner's eligibility.

BC+ recipients are required to report if income in a month rises above the 100% FPL level. *BC+ Handbook*, §27.3 (Release 16-01). The report must be made by the tenth of the next month, and BC+ eligibility will be adjusted the following month if income remains above the limit.

When calculating the amount of an MA overpayment, the agency is directed to use the actual income that was reported or required to be reported in determining if an overpayment has occurred. The amount of the recovery may not exceed the amount of the BC+ benefits that were provided incorrectly. See *BC+ Handbook*, §28.4.2 (Release 15-01).

The MA recovery statute clearly provides for recovery of MA when a recipient or representative fails to report income which would affect eligibility. The failure does not have to be intentional. The agency did not suggest that it was making a fraud case here. Even an honest mistake of failing to report income is subject to the recovery rights for the agency.

Additionally, the agency has published Operations Memo 17-35, which provides:

CONSIDERING GAP FILLING ELIGIBILITY WHEN DETERMINING OVERPAYMENTS FOR HEALTH CARE

When reviewing a case for any potential overpayments for health care, IM agencies must assess whether the person could have been eligible in any other category of Medicaid before issuing an overpayment. Since gap filling is considered a category of Medicaid, agencies must assess whether the person could have been eligible under gap filling rules during the overpayment period. If the person could have been eligible under gap filling rules for the overpayment period, he or she should not be subject to an overpayment.

Example 6: Mason became eligible for BadgerCare Plus as a childless adult in January 2017 and had no countable income. When he completed his renewal in December 2017, Mason reported he started working in September. Verification shows that he works 30 hours per week and earns \$10.00 per hour, so his counted income is \$1,200 per month. Although Mason exceeded his reporting limit of \$1,005 per month, the worker must look at what would have happened had he reported the change timely when the worker determines if an overpayment has occurred.

The worker finds that if he had reported the change timely, Mason would have been over income based on his monthly income. However, Mason would have been eligible under gap filling rules based on his annual income of \$4,800 (\$1,200 per month from September to December), so there is no overpayment.

The agency performed both functions here, using actual and annualized income, and found petitioner still remained over the income limit. The annual limit in 2016 for a household of one was \$11,880. *BC+ Handbook*, §50.1 (Release 16-01). The state wage record shows that he earned more than the limit in 2016.

Petitioner did not identify errors in the calculations of household income. Rather, he testified that he did not recall applying for or receiving MA. While I understand the MA process can be confusing, the record shows he applied and renewed the MA three times after his application. Case comments show he knew how to contact the agency. The Medicaid Paid Report shows MA paid for claims and capitation fees during the overpayment period. The agency showed at hearing that he was advised of his reporting requirements and for which he certified by his electronic signature that he understood at each renewal. Based on the foregoing, I must find that the agency correctly seeks to recover these benefits.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433

F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The agency has established an MA overpayment against the petitioner from July 1, 2016-September 30, 2016 in the amount of \$551.79.

THEREFORE, it is

ORDERED

The petition for review herein is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way 5th Floor, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

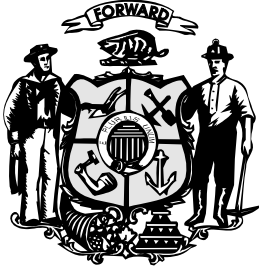
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 7th day of January, 2022

\s _____
Kelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 7, 2022.

Racine County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability